

To:	Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court United States District Court for the Western District of Washington on the following: ___ Patents or X Trademarks:

DOCKET NO.	DATE FILED	US District Court United States District Court for the Western District of Washington	SOLICITOR
2:07-cv-01364-JLR	8/31/07		SEP - 4 2007
PLAINTIFF		DEFENDANT	
Derek Andrew Inc		Vital Pharmaceuticals Inc	
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	
1. See attached	6.	11.	
2. <u>214,175</u>	7.	12.	
3. <u>817,040</u>	8.	13.	
4.	9.	14.	
5.	10.	15.	

In the above-entitled case, the following patents(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	
	Amendment ___ Answer ___ Cross Bill ___ Other Pleading ___	
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.
1.	6.	11.
2.	7.	12.
3.	8.	13.
4.	9.	14.
5.	10.	15.

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT		
CLERK	(BY) DEPUTY CLERK	DATE
Bruce Rifkin	DI	9/4/07

FILED
LODGED
AUG 31 2007 DJ
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
By

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

C07-1364R

DEREK ANDREW, INC., a Washington
corporation,

Plaintiff,

v.

VITAL PHARMACEUTICALS, INC., a Florida
corporation,

Defendants,

No. C05-1136Z

COMPLAINT FOR TRADEMARK
INFRINGEMENT, AND
VIOLATIONS OF THE LANHAM
ACT AND THE WASHINGTON
CONSUMER PROTECTION ACT

JURY TRIAL DEMAND

Derek Andrew, Inc., ("Derek Andrew" or "Plaintiff"), hereby alleges as follows:

NATURE OF ACTION

1. This is an action for trademark infringement, false designation of origin, unfair competition and unfair business practices arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.* and the Washington Consumer Protection Act, RCW § 19.86 *et seq.*

THE PARTIES

2. Derek Andrew is a Washington corporation having a principal place of business in Bellevue, Washington.



07-CV-01364-CMP

COMPLAINT — 1

SEA 1684652v1 0066284-000096

Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, Washington 98101-3045
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SEA 11788 8215

3. Upon information and belief, Defendant Vital Pharmaceuticals, Inc., d/b/a VPX Sports ("VPX") or "Defendant" is a Florida corporation having its principal place of business in Broward County, Florida and conducting business within this judicial district.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). The Court has supplemental jurisdiction over Derek Andrew's state law claims pursuant to 28 U.S.C. §§ 1367.

5. Upon information and belief, this Court has personal jurisdiction over VPX based on its substantial, continuous and systematic business activities within this State; and the fact that it has sold or distributed products that are the subject matter of this lawsuit in this state and this judicial district.

6. Venue in this judicial district is proper under 28 U.S.C. § 1931(b) & (c) and 1400(a).

PLAINTIFF AND ITS BUSINESS

7. Derek Andrew is a leading manufacturer of several very popular trademarked brands of clothing, clothing accessories, and related products.

8. Derek Andrew sells products in association with its RED LINE trademarks, which are the subject of two federal trademark registrations: Registration No. 214,175 for Red Line® for men's coats and trousers in International Class 039 and Registration No. 817,040 for Red Line® (and design) for women's clothing; namely, pants, sweatshirts, sweatpants, shirts, t-shirts, knit shirts and skirts, vest, jackets, coats, and shoes in International Class 025. These trademarks have been consistently used to promote the sale of Derek Andrew's products throughout the United States and elsewhere.

1 9. By virtue of its promotional efforts over many years, and expenditures in
2 promoting, and popularizing its trademarks, the marks have become well-known, and
3 Derek Andrew's products have become associated with the marks. Through Derek
4 Andrew's use and promotional efforts, a substantial amount of good will has come to be
5 associated with its products and its associated trademarks.

6 DEFENDANT AND ITS ILLEGAL ACTIVITIES

7 10. Upon information and belief, Defendant VPX is primarily a supplier of
8 dietary and nutritional supplements and sports beverages, sometimes under the REDLINE
9 trademark. Incidental to its primary business focus, VPX manufactures, sells and/or
10 distributes athletic clothing and related products, including sweatshirts and sweatpants,
11 bearing the REDLINE trademark. VPX promotes its athletic clothing and related products
12 bearing the REDLINE trademark over the Internet and in other promotional publications
13 and venues.

14 DEFENDANT'S PREEMPTORY INSTITUTION OF SUIT

15 11. On July 30, 2007 Derek Andrew formally notified VPX that its use of
16 REDLINE on athletic wear infringed Derek Andrew's superior trademark right. VPX's
17 attorneys duly responded on August 20, 2007 providing an analysis of the issue and
18 inviting further discussion. Notably, VPX's attorneys intentionally failed to advise Derek
19 Andrew that VPX was contemporaneously filing a Complaint in the U.S. District Court for
20 the Southern District of Florida seeking declaratory relief. VPX's Complaint had not been
21 served until today, August 31, 2007, but was intended solely as a preemptive, place-
22 holders suit, inappropriately intended to bolster claims for Florida as the proper situs of
23

litigation between the parties. VPX's August 20, 2007 suit in the Southern District of Florida was prepared and prosecuted in derogation of FRCP 11.

COUNT I – VIOLATION OF THE LANHAM ACT

12. Derek Andrew incorporates by reference paragraphs 1-11 of this Complaint by reference as if fully set forth herein.

13. VPX's unauthorized use of Derek Andrew's RED LINE mark has or will cause confusion, mistake or to deceive consumers as to the source of origin of its products. VPX's actions are likely to cause members of the public who see the unauthorized use of the mark to believe that VPX or their products have an affiliation, connection, association, origin, sponsorship or approval of Derek Andrew or vice versa. VPX's actions constitute a false designation of origin in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1).

14. Derek Andrew has been and will continue to be irreparably harmed by Defendant's actions unless VPX is preliminarily and permanently enjoined from continuing the sale of clothing and related products using the RED LINE mark.

15. Derek Andrew is entitled to recover (1) all of the Defendants' profits, (2) all damages sustained by Derek Andrew, and (3) all costs of this action that result from VPX's unlawful and willful use of the RED LINE mark, as well as trebling of those damages and an award of reasonable attorney fees pursuant to 15 U.S.C. § 1117(a).

COUNT II – TRADEMARK INFRINGEMENT

16. Derek Andrew incorporates by reference paragraphs 1-15 of this Complaint as if fully set forth herein.

17. VPX's unauthorized use of the REDLINE for clothing and related products infringes Derek Andrew's clearly prior and incontestable rights in its mark.

1 18. Derek Andrew has been and will continue to be irreparably harmed by
2 Defendant's actions unless VPX is preliminarily and permanently enjoined from
3 continuing the use of the REDLINE mark on clothing and related products.

4 19. Derek Andrew is entitled to recover (1) all of the Defendants' profits, (2) all
5 damages sustained by Derek Andrew, and (3) all costs of this action that result from
6 VPX's unlawful and willful use of the RED LINE mark, as well as trebling of those
7 damages and an award of reasonable attorney fees pursuant to 15 U.S.C. § 1117(a).

8 COUNT III – VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT

9 20. Derek Andrew incorporates by reference paragraphs 1-19 of this Complaint
10 as if fully set forth herein.

11 21. Defendant's actions in willfully and recklessly using the REDLINE mark
12 for clothing and related products constitutes unfair and deceptive acts or practices
13 occurring in trade or commerce having a deleterious impact on the public interest and have
14 or will cause injury to Derek Andrew's business or property.

15 22. Defendants' actions as alleged above amount to a violation of the
16 Washington Consumer Protection Act, RCW § 19.86 *et seq.*

17 23. Derek Andrew has been and will continue to be irreparably harmed by
18 Defendants' actions unless Defendant is preliminarily and permanently enjoined from
19 continuing to violate the Washington Consumer Protection Act by their continued willful
20 use of the REDLINE mark for clothing and related products.

21 24. Derek Andrew is entitled to recover damages under RCW 19.86.090 for
22 Defendant's willful actions, as well as trebling of those damages plus an award of
23 attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Derek Andrew, Inc. prays for the following alternative and cumulative judgment against Defendant Vital Pharmaceuticals, Inc. as follows:

A. Awarding damages for Defendant's violations of the Lanham Act in an amount to be determined at trial, including (1) all of the Defendants' profits, (2) all damages sustained by Derek Andrew, and (3) all costs of this action; trebling those damages to adequately compensate Derek Andrew that result from the unauthorized use of the REDLINE trademark on clothing and related products; and awarding Derek Andrew its reasonable attorney fees; *see* 15 U.S.C. § 1117(a);

B. Awarding damages for Defendants' infringement of its trademark in an amount to be determined at trial;

C. Awarding all damages available under RCW 19.86.090, including trebling of damages and an award of attorneys' fees;

D. An order temporarily enjoining during the pendency of this action and permanently at the conclusion of this action Defendants and each of their agents, employees, attorneys, successors, assigns, affiliates, joint ventures, and any person(s) acting for, with, by, through or under any of them from:

1. Manufacturing, producing, sourcing, importing, selling, offering for sale, distributing, advertising or promoting any clothing or related products by use of any words or symbols that resemble Derek Andrew's RED LINE mark as to be likely to cause confusion, mistake, or deception on or in connection with any clothing or related products that are not authorized by or for Derek Andrew, or any similarly confusing approximation of the RED LINE trademarks;

2. Using any word, term, name, symbol, device, or combination thereof that causes or is likely to cause confusion, mistake, or deception as to the affiliation or association of Defendants or their goods with Derek Andrew or as to the origin of Defendants' goods, or any false designation of origin, false or misleading description or representation of fact;

3. Otherwise competing unfairly with Derek Andrew in any manner;

4. Violating the Washington Consumer Protection Act in any manner;
and

5. Continuing to perform in any manner whatsoever any of the other acts complained of in this Complaint;

E. Requiring Defendants to immediately supply Derek Andrew's counsel with a complete list of individuals and entities from whom they purchased and to whom they have sold, offered for sale, distributed, advertised, or promoted any clothing or related product bearing a mark or designation that infringes Derek Andrew's RED LINE marks;

F. Requiring Defendants to immediately deliver to Derek Andrew's counsel Defendant's entire inventory, including but not limited to any clothing, clothing accessories, or related products and any other infringing and unauthorized products, packaging, labeling, labels, advertising matter, promotional material and any plates, molds, matrices, and other material for producing or printing such items that are in the possession of any of the Defendants or subject to their control and that improperly and illegally use the RED LINE marks or any mark or designation confusingly similar thereto;

G. Requiring Defendant, within twenty (20) days after entry of any Judgment in this case, to prepare and file with this Court and serve upon Derek Andrew's counsel, a

1 written report, under oath, setting forth in detail the manner in which that Defendant has
2 complied with the Judgment;

3 H. Awarding Derek Andrew its reasonable costs; and

4 I. Granting such other and further relief as to the Court may appear just and
5 proper under the circumstances.

6 JURY DEMAND

7 Plaintiff Derek Andrew demands a jury for all issues triable to a jury.

8 DATED this 31st day of August, 2007.

9
10 Davis Wright Tremaine LLP
Attorneys for Plaintiff Derek Andrew, Inc.

11
12 By 

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